No. 86-629

In The
Supreme Court of the United States
October Term, 1986

SEATTLE MASTER BUILDERS ASSOCIATION, *et al.*,
Petitioners,

v.

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL,
Respondent,

UNITED STATES OF AMERICA,
Intervenor-Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICUS CURIAE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

THE IDAHO COOPERATIVE UTILITIES ASSOCIATION, INC.

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INTEREST OF AMICUS CURIAE

Pursuant to United States Supreme Court Rule 36.1, the Idaho Cooperative Utilities Association, Inc. (ICUA) files this brief in support of the Petition for Writ of Certiorari filed by the Seattle Master Builders Association, *et al.* in *Seattle Master Builders Association, et al. v. Pacific Northwest Electric Power and Conservation Planning Council*, No. 86-629 (1986).

The ICUA is an association of cooperative utilities serving approximately 150,000 consumers throughout rural Idaho.[1] The ICUA represents its cooperative utility members in rate and power supply matters before various federal and state agencies, including the Bonneville Power Administration (BPA). The BPA, an agency within the United States Department of Energy, supplies all of the electric power requirements of the cooperatives, which serve as retailers of that power to their consumers/members. As customers of BPA, the cooperatives and their members are directly affected by the 1986 Northwest Conservation and Electric Power Plan (the Plan) as promulgated by the Pacific Northwest Electric Power and Conservation Planning Council (the Council) and as implemented by BPA.

The Plan contains Model Conservation Standards (MCS)which must be adopted by the utility customers of BPA. The adoption of MCS under the Plan is achieved when the specified percentage of newly constructed electrically heated residential and commercial buildings conform to the standards. The Plan recommends that the

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[1]The ICUA member utilities are Clearwater Power Company, Lewiston, Idaho; Fall River Rural Electric Cooperative, Inc., Ashton, Idaho; Idaho County Light & Power Cooperative, Inc., Grangeville, Idaho; Inland Power & Light Company, Spokane, Washington; Kootenai Electric Cooperative, Inc., Hayden Lake, Idaho; Lost River Electric Cooperative, Inc., Mackay, Idaho; Lower Valley Power & Light, Inc., Afton, Wyoming; Northern Lights, Inc., Sandpoint, Idaho; Prairie Power Cooperative, Inc., Fairfield, Idaho; Raft River Rural Electric Cooperative, Inc., Malta, Idaho; Rural Electric Company, Rupert, Idaho; Salmon River Electric Cooperative, Inc., Challis, Idaho; South Side Electric Lines, Inc., Declo, Idaho; and Unity Light & Power Company, Burley, Idaho.

Administrator of BPA impose a ten percent (10%) annual surcharge on the wholesale power rates of utility customers of BPA who fail to adopt MCS.

By the Council's own estimate, on the average, MCS will add $2,534 to the construction cost of a single-family home in the Pacific Northwest. 1986 Plan, Vol. II, p. 4-12, Table 5-23 at p. 5-22. In rural Idaho, where local economies are already depressed by the sagging timber and agricultural industries, a $2,534 increase in the initial cost of a new home is a substantial burden even if this initial cost is subsequently recovered. The initial cost may be prohibitive where it will not be fully recovered through power savings.[2] If the cooperative utilities do not adopt MCS and are subjected to the wholesale rate surcharge, the cooperatives must in turn increase their rates to consumers. For example, Salmon River Electric Cooperative would be required to impose an 8.2% system-wide rate increase upon retail consumers to pay for the 10% surcharge imposed by BPA.[3] The communities served by ICUA members will suffer perhaps the greatest financial burden of any group affected by the Plan through the increased cost of new residential and commercial construction if MCS is adopted, or through the surcharge penalty if MCS is not adopted.

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[2]The ICUA concurs in the Petitioners' argument that the actual savings from MCS realized by consumers is their average cost of power, rather than the higher marginal cost of power used by the Council. *See* Petition, pp. 24-30; 1986 Plan, Vol. II, pp. 4-12. Consequently, consumers will not fully recover the initial cost of MCS through subsequent power savings.

[3]The analysis used to compute the necessary retail rate increase is set forth in Appendix A.

The rural electric cooperative, as a rural utility with relatively few consumers and significant distribution costs, is directly impacted by MCS and represents a unique point of view which is not before the Court. The question of the proper establishment, institutional role and legal authority of the Council is a threshold question which must be answered if the cooperatives are to know whether or not they must comply with MCS. Consequently, ICUA respectfully appears as amicus curiae in support of the Petition for Writ of Certiorari.

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STATEMENT OF THE CASE

The ICUA adopts and incorporates by reference the Statement of the Case set forth in the Petition for Writ of Certiorari.

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SUMMARY OF REASONS FOR GRANTING THE WRIT

Pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (the Regional Power Act), 16 U.S.C. §§ 839-839h, the Council, composed of state political appointees, is exercising directory authority over BPA for the acquisition of necessary energy resources in the Pacific Northwest in violation of the appointments clause and supremacy principles of the United States Constitution. The Ninth Circuit Court of Appeals has now given constitutional sanction to the Council's directory authority over BPA.

This case presents unique issues involving purported state control over the federal agency charged by federal

law with the management and control of the Federal Columbia River Power System—the country's largest hydroelectric power operation.

As a statute affecting only the Pacific Northwest, the Regional Power Act is subject to review only in the Ninth Circuit. The Ninth Circuit's decision conflicts with this Court's decision in *Buckley v. Valeo,* 424 U.S. 1 (1976). The constitutionality of the Council's authority over BPA is an important question for the ICUA and the parties to this action and must be settled by this Court.

Section 4 of the Regional Power Act, 16 U.S.C. § 839b, specifies in extraordinary detail the requirements for the establishment and operation of the Council. Participation of the states was limited to the formality of providing for the appointment of members to the Council. Although the Council members may "serve" pursuant to the state appointment statutes, it is clear from the Regional Power Act that the Council exercises its authority "pursuant" to that Act. It is well-established that any appointee exercising significant authority pursuant to federal law must be appointed by the President as prescribed by Art. II, § 2, cl. 2, of the United States Constitution. *Buckley v. Valeo,* 424 U.S. 1 (1976). The members of the Council, as currently established, were not appointed in the constitutionally-prescribed manner and, therefore, the Council's actions establishing MCS as part of the Plan are contrary to the Constitution and void.

The question of the Council's constitutionality is ripe for review and presents a justiciable case or controversy. The Council's promulgation of MCS as part of the Plan is an exercise of significant authority over BPA which

impacts both ICUA and the Petitioners. The Regional Power Act requires the Administrator of BPA to implement all conservation measures which are consistent with the Plan. Under the Plan, both residential and commercial MCS are nondiscretionary conservation measures. If the Administrator is to act consistently with the Plan, he must implement residential and commercial MCS. As a result, through MCS and the Plan, the Council is exercising significant authority over BPA impacting both ICUA and the Petitioners.

Finally, the Council does not possess the characteristics of an agency established by an interstate compact. No formal and contractual agreement exists between the Pacific Northwest states. The state's appointment statutes simply provide that each state is participating in a council created pursuant to the Regional Power Act. The Regional Power Act itself does not contain sufficient indicia of congressional intent to create and consent to an interstate compact. Although Congress couched the establishment of the Council in terms of an "agreement" between the states, conspicuously absent is reference to an interstate compact. Moreover, the Idaho appointment legislation specifically reserves to that state the various areas of state law which would logically be subject to the jurisdiction of the Council were it a compact agency (retaining the rights of the state and its citizens with respect to water or water related rights and rights relating to the regulation of the energy industry). Despite its attempt to avoid the constitutional difficulties establishment of the Council created, Congress and the states did not create an interstate compact, nor did they intend to create an interstate compact.

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REASONS FOR GRANTING THE WRIT

I. The Ninth Circuit Erred in Upholding the Constitutionality of the Council by Erroneously Concluding That the Council Was Established Pursuant to an Interstate Compact and Does Not Exercise Authority Pursuant to Federal Law

In *Buckley v. Valeo,* this Court held that "any appointee exercising significant authority pursuant to the laws of the United States is an 'Officer of the United States' and must, therefore, be appointed in the manner prescribed by § 2, cl.2 of [Article II of the United States Constitution]." 424 U.S. 1, 126 (1976). The Ninth Circuit interpreted this holding to require the presence of three elements as a prerequisite to application of the appointments clause. Those elements are: (1) all executive or administrative officers, (2) who serve pursuant to federal law, and (3) who exercise significant authority over federal government actions. *Seattle Master Builders Association, et al. v. Pacific Northwest Electric Power and Conservation Planning Council,* 786 F.2d 1359, 1365 (9th Cir. 1986). The Ninth Circuit concluded that because the Council was established pursuant to an interstate compact, the Council members do not "serve" pursuant to federal law and, therefore, the second element of *Buckley* was absent and the Council was not established in violation of the appointments clause. *Id.*

The underlying policy for this holding was the Ninth Circuit's conclusion that the appointments clause concerns only the separation of powers within the federal government, a concern not implicated in this case. The [illegible]acy

of this conclusion is addressed in the Petition for Writ of Certiorari at pages 11-20. We concur in the Petitioners' analysis and that analysis will not be repeated here.

The Ninth Circuit's technical application of the holding in *Buckley* is also erroneous. First, *Buckley* does *not* require that the Council members "serve" pursuant to federal law. Rather, *Buckley* requires only that the Council members exercise significant authority "pursuant" to federal law. The distinction is more than mere semantics.

First, the Council was not established by an interstate compact. *See* Part III, *infra* at p. 13. In any event, the characterization of the Council as an interstate compact agency or a federal agency is a matter of form, not substance, and is not dispositive. The Court must look to the Council's statutory authority over BPA.

Section 4 of the Regional Power Act, 16 U.S.C. § 839b, specifies in extraordinary detail the requirements for the establishment and operation of the Council. Congress provided that the "purposes of this section are to provide for the prompt establishment and effective operation of the [Council]." 16 U.S.C. § 839b(a)(1). The Regional Power Act specifies rules for the appointment of members, payment of members, and applicability to the Council of laws applicable to BPA, and vests exclusive jurisdiction for review of the Council's actions in the United States courts. 16 U.S.C. §§ 839b(a)(2), (3), and (4). The Congress also specified internal Council procedures, including a majority as a quorum, voting prerequisites for approval of a Plan, public disclosure and input, and payment of compensation and expenses of the Council by the Administrator of BPA. 16 U.S.C. §§ 839b(c)(2), (3), and (10).

The Congress also specified details of the Plan to be prepared by the Council, including priorities relating to conservation, renewable resources and generating resources, 16 U.S.C. § 839b(e)(1), the elements of the Plan, 16 U.S.C. § 839b(e)(3), details of MCS (including geographic and climatic differences within the region and financial assistance to be made available to consumers), 16 U.S.C. § 839b (f)(1), and imposition of a surcharge on those customers which do not implement MCS, 16 U.S.C. § 839b(f)(2). Perhaps most importantly, the subject matter of the Council's activities for which such detail is specified is an area of traditionally federal, rather than state, control.

Consistent with the substantive details of the Regional Power Act, participation of the states was limited to the formality of providing for the appointment of members to the Council. *See* 16 U.S.C. § 839b(a)(2); Idaho Code §§ 61-1201-1207; Mont. Code Ann. §§ 90-4-401-404; Or. Rev. Stat. §§ 469.800-845; and Wash. Rev. Code Ann. §§ 43.52A. 010-050. In view of the Regional Power Act's detailed provisions, the state statutes do not, nor could they under the preemption doctrine, define the Council's obligations or authority. *See Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984). The Congress simply left no room for state law to specify any substantive aspects of the Council or its authority.

Although the Council members may "serve" pursuant to the state appointment statutes, it is clear from the Regional Power Act that the Council exercises its authority "pursuant" to that Act and that such was the intent of Congress (despite its disclaimer that the Council should

not be considered an "agency or instrumentality of the United States," 16 U.S.C. § 839b(a)(2)(A)).[4]

As to the requirement that the Council exercise significant authority, Judge Beezer's dissent to the Ninth Circuit's decision in this case accurately documents the significant authority the Council exercises through its promulgation of the Plan and BPA's obligation to comply with that plan. 786 F.2d at 1375-76; *see also* discussion in Part II, *infra* at p. 11. Moreover, the Council does not argue that it lacks significant authority over BPA.

The Council exercises significant authority pursuant to the laws of the United States. Council members are not appointed by the President or the Secretary of Energy as required by the appointments clause of the United States Constitution. U.S. Const., art. II, § 2, cl. 2. Consequently, the Council's actions establishing MCS as part of the Plan are contrary to the Constitution and void. *Buckley,* 424 U.S. at 126, 143.

II. The Question of the Council's Constitutionality is Ripe for Review and Presents a Justiciable Case or Controversy

The United States, as an intervenor before the Ninth Circuit, argued that the constitutional issues raised in this case are not ripe for review because MCS is only a rec-

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[4]Congress recognized the constitutional difficulties manifest in the establishment of the Council in its present form and provided for the alternative establishment of the Council as a federal agency. 16 U.S.C. § 839b(b). Consequently, the unconstitutionality of the Council in its present form will require reappointment of its members consistent with law, but will not destroy the underlying structure of the Council.

ommendation which need not be implemented by BPA and, therefore, the Council exercises no significant authority over BPA in this regard. The ICUA anticipates the United States will again raise this argument in opposition to the Petition for Writ of Certiorari. The Council's promulgation of MCS as part of the Plan is an exercise of significant authority over BPA which impacts both ICUA and the Petitioners. Consequently, the constitutional issues in this case are ripe for review and present a justiciable case or controversy.

The Regional Power Act mandates that all actions of the Administrator of BPA regarding conservation and resource acquisition "shall be consistent with the plan...." 16 U.S.C. § 839b(d)(2). The Regional Power Act further provides that "[t]he Administrator *shall* acquire such resources through conservation, *implement all such conservation measures,* and acquire such renewable resources . . . as the Administrator determines are consistent with the plan...." 16 U.S.C. § 839d(a)(1) (emphasis added). The Plan provides that both residential and commercial MCS are *nondiscretionary* resources. 1986 Plan, Vol. I, Table 8-3 at p. 8-7. Consequently, if the Administrator is to act consistently with the Plan he *must* implement residential and commercial MCS. The BPA has no discretion in this regard.[5]

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[5]The United States correctly argued to the Ninth Circuit that the Council can only recommend imposition of a surcharge as a penalty for those customers who fail to adopt MCS. This, however, does not change the fact that §§ 839b(d)(2) and 839d (a)(1) require BPA to implement MCS. The constitutional implications arise in the Council's authority to direct BPA to implement MCS not in the question of how BPA chooses to accomplish implementation.

Whether MCS is implemented through voluntary adoption or by the imposition of surcharges or other economic "encouragement," implementation will have a real and substantial impact on ICUA members and their retail customers, as well as the members of the building trades who are petitioners in this action. The constitutional issues presented are ripe for review and are the subject of a justiciable case or controversy. *See Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 297-98 (1979); *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967).

There is another important reason why the constitutional issues presented by this case should be resolved at this time. The Ninth Circuit held that the Council's interpretation of the statutory requirement that MCS be "economically feasible for consumers" was entitled to substantial deference and will be upheld if reasonable. 786 F.2d at 1367. The Ninth Circuit relied upon the well-established rule that the construction of a statute by the agency charged with its administration is entitled to substantial deference. *Id.* at 1366. As a result, the Ninth Circuit has compounded its error of giving constitutional sanction to the state political appointees' exercise of directory authority over BPA by deferring to those same state political appointees' interpretation of the statute which gives them their power—a statute drafted and passed by the Congress of the United States.

The Ninth Circuit has generously allowed the Council to have its cake and eat it too! Surely, even the expansive limits of what the Ninth Circuit perceives as "an innovative system of federalism" are stretched beyond the breaking point in this case.

The constitutional issues in this case were ripe for decision by the Ninth Circuit and the Ninth Circuit's decision has amplified the need for this Court to resolve those issues.[6]

III. The Council Was Not Established Nor Does it Operate Pursuant to an Interstate Compact

The Council does not possess the characteristics of a body established by an interstate compact. An interstate compact has been described as having the following characteristics:

> To delineate the essence of the interstate compact, it may be emphasized that it has the following characteristics: 1. It is formal and contractual. 2. It is an agreement between the states themselves, similar in content, form, and wording to an international treaty, and usually embodied in state law in an identifiable and separate document called the "compact." 3. It is enacted in substantially identical words by the legis-

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[6]The United States may also argue the constitutional issues are not ripe because the Ninth Circuit did not decide if the Council exercises significant authority over BPA (relying on the Ninth Circuit's statement that it is "immaterial whether [the Council members] exercise some significant executive or administrative authority over federal activity." 786 F.2d at 1365.). As noted, the Regional Power Act itself clearly authorizes the Council to exercise significant authority over BPA. Further, the Ninth Circuit's decision upholding the constitutionality of the Council implicitly recognizes the Council's directory authority over BPA. In any event, any uncertainty as to the Council's authority over BPA which may exist in the wake of the Ninth Circuit's decision is a sufficient basis for review by this Court. In order to effectively plan for and engage in future operations, the electric cooperatives comprising ICUA, and presumably the petitioner building trades organi. ions, must know what authority the Council will have in MCS and other critical power supply matters.

> lature of each compacting state. 4. At least in certain cases, consent of Congress must be obtained; in all cases, Congress may forbid the compact by specific enactment. 5. It can be enforced by suit in the Supreme Court of the United States if necessary. 6. It takes precedence over an ordinary state statute.

F. ZIMMERMAN & M. WENDELL, THE INTERSTATE COMPACT SINCE 1925 § 42 (1951); *see Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System*, — U.S. —, 105 S. Ct. 2545 (1985); *Virginia v. West Virginia*, 246 U.S. 565 (1918); *Virginia v. Tennessee*, 148 U.S. 503 (1893).

A. No Formal and Contractual Agreement Exists

Title 61, Sections 1201-1207, Idaho Code, do not provide for any formal agreement with other states. Those statutes simply provide that Idaho agrees to participate in the formation of a council "created pursuant to the Pacific Northwest Electric Power Planning and Conservation Act." Idaho Code § 61-1201. Under Idaho law, interstate compacts are treated as formal contracts enacted into state law pursuant to legislative action. Interstate compacts to which the state of Idaho is a party are set forth in Idaho Code §§ 42-3401-3404. For example, in ratifying the Snake River Compact, the State of Idaho set forth the formal contract in state law. Idaho Code § 42-3401. Similarly, the Bear River Compact is found at Idaho Code § 42-3402 and the Anadromous Fish Compact with Oregon and Washington is found at Idaho Code § 42-3404.

In this case, no formal or express activity occurred in any of the states involved. No state legislation exists which can be referred to as a formal and contractual

agreement with any other state. Idaho Code §§ 61-1201-1207; Mont. Code Ann. §§ 90-4-401-404; Or. Rev. Stat. §§ 469.800-845; and Wash. Rev. Code Ann. §§ 43.52A.010-050. Hence, no compact was created.

B. No Agreement Exists Between the States of Idaho, Montana, Oregon or Washington

There is no identifiable document which evidences an agreement between the states of Idaho, Montana, Oregon or Washington. Title 61, Sections 1201-1207, Idaho Code, do not mention the states of Montana, Oregon or Washington. The Idaho statutes do not evidence any intent on the part of the state of Idaho to contract, compact or agree with any entity regarding the Council. The Idaho appointment legislation simply provides that the State of Idaho will participate in a council created by federal statute. Idaho Code § 61-1201.

Similarly, Or. Rev. Stat. § 469.800 refers only to Oregon's "participation in the Pacific Northwest Electric Power and Conservation Planning Council." The Oregon statutes contain no reference to the other three states, nor do they reflect any intent to enter into a contract, compact or agreement with any other state. Or. Rev. Stat., §§ 469.800-845. The Montana and Washington statutes also do not manifest an intent to enter into a compact, contract or agreement with any other state. Mont. Code Ann. §§ 90-4-401-404; Wash. Rev. Code Ann. §§ 43.52A.010-050.

Consequently, the state statutes applicable to the Council do not create any agreement among the states.

C. The State Statutes Do Not Use Substantially Identical Language

A comparison of Idaho, Montana, Oregon and Washington statutes appointing members to the Council reveals significant differences in the statutory language. Idaho allows the Governor to appoint two state officers to the Council. These positions are administratively structured within the office of the Governor. Idaho Code § 61-1202. The Council members from Idaho serve at the pleasure of the Governor. Idaho Code § 61-1203. Similarly, members of the Council representing Montana and Washington are appointed by and serve at the pleasure of the Governor. Mont. Code Ann. § 90-4-402; Wash. Rev. Code Ann. § 43.52A.030-43.52A.040.

Under Oregon law, however, Council members for Oregon are considered full-time state public officials serving a fixed term and may not be removed at the pleasure of the Governor. Or. Rev. Stat. §§ 469.805, 815, 820.

Although Idaho, Montana and Washington have similar appointment provisions, such provisions are distinct from those of Oregon.

D. The Regional Power Act Does Not Contain Sufficient Language or Indication of Congressional Consent to the Creation of an Interstate Compact Agency in the Form of the Council

The Congressional Declaration of Purpose expresses an intent to provide for participation and consultation of the Pacific Northwest states, local governments, consumers, customers, users of the Columbia River system, and the public at large within the region for the development of

regional energy plans and fish and wildlife programs. 16 U.S.C. § 839. Although it is evident from the language of Section 4 of the Act, 16 U.S.C. § 839b, that Congress was concerned with the potential constitutional infirmities of the Regional Power Act and attempted to couch the establishment of the Council in terms of an "agreement" between the states, the Congress stopped short of specifying establishment through an interstate compact. Reference to an interstate compact is conspicuously absent from the Regional Power Act. Moreover, the legislative history of the Regional Power Act does not support the creation of an interstate compact. *See* H.R. Rep. No. 976 (Pt. I), 96th Cong., 2d Sess. (1980); H.R. Rep. No. 976 (Pt. II), 96th Cong., 2d Sess. (1980); S. Rep. No. 272, 96th Cong., 1st Sess. (1979).

The Regional Power Act and its legislative history do not evidence congressional intent to consent to the creation of an interstate compact as the vehicle for establishing the Council.

E. The Activities of the Council Do Not Take Precedence Over State Statutes

The Idaho appointment legislation specifically reserves to the state the various areas of state law which would logically be subject to the jurisdiction of the Council, were it a compact agency. Idaho Code, § 61-1201 provides:

> Nothing in this agreement shall be construed to alter, diminish or abridge the rights of the state of Idaho and its citizens with respect to any water or water related right and those relating to the regulation of the energy industry.

There are no statutory provisions which indicate the plans or programs promulgated by the Council were intended

to be superior to any conflicting state statutes. The state of Idaho has not manifested any intent that, by placing members on the Council, it has subordinated its own statutory provisions to the plans or programs promulgated by the Council pursuant to and consistent with any interstate compact.

In sum, the Regional Power Act and the state appointment statutes do not exhibit the characteristics of an interstate compact. Despite its attempt to avoid the constitutional difficulties establishment of the Council under the Regional Power Act and activities pursuant to that Act would create, Congress did not create an interstate compact nor did it intend to create an interstate compact. Moreover, the state appointment statutes clearly do not contemplate the Council as a creature of an interstate compact.

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CONCLUSION

The Ninth Circuit's decision in this case allows the Congress to dilute the constitutional powers of the executive branch by granting to state political appointees the authority to exercise directory authority over a federal agency, in violation of the appointments clause and supremacy principles of the United States Constitution. The actions of the unlawfully constituted Council have a substantial and direct impact on the ability of ICUA members and their customers to maintain an economical power supply.

For the above-stated reasons a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

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APPENDIX A

EFFECT OF A 10% RATE SURCHARGE

ON
SALMON RIVER ELECTRIC COOPERATIVE
CHALLIS, IDAHO

Customer Growth:

	Total	New Residential Buildings	New Commercial Buildings
Dec 1981	2403	5	1
Dec 1982	2584	4	0
Dec 1983	2466	3	1
Average		4	.67

Potential KWH Savings due to MCS:

New Residential:

Average Sq.ft.	Estimated Zone 3 W/O MCS		KWH/Sq.ft./Yr. W/MCS		Savings
(1325)	(9.0	—	3.1)	=	7818

(4 Residential Bldgs) (7818 KWH/Bldg/Yr) = 31,272 KWH of potential residential savings

New Commercial

Average Sq/ft.	Estimated KWH/Sq.ft./Yr Savings W/MCS		Savings
(10,000)	(.00013)(8760)	=	11,388

(.67 Comm'l Bldgs) (11,388 KWH/Bldg/Yr) = 7,630 KWH of potential commercial savings

31,272 + 7,630 = 38,902 KWH of Potential Savings of Incremental Load

Estimated Surcharge should MCS not be adopted:

August 1983—July 1984 power purchases	$4,372,795
Anticipated PF-85 rate increase @10%	437,280
Estimated 1986 power purchases @0% growth	$4,810,075
Estimated Surcharge @10%	$ 481,008

Estimated Surcharge/KWH of Incremental Load:

$$\frac{\$481{,}008}{38{,}902\ \text{KWH}} = \$12.36/\text{KWH}$$

Estimated Additional Cost to Provide Incremental Load:

NR-85
($0.0276/KWH)(38,902 KWH) = $1,074

Surcharge to Cost Ratio:

$481,008/$1,074 = 448:1
A 1:1 ratio would indicate ideal cost tracking

Estimated Effect on SREC Rates:

Total Cost of Electric Service (12/83)	$ 3,292,248
Less 12/83 Purchased Power Actual	(2,214,883)
Add Estimated 1986 Purchased Power at PF-85	4,810,075
Estimated 1986 Total Cost of Electric Service W/o Surcharge	$ 5,887,440
Add Surcharge	481,008
Estimated 1986 Total Cost of Electric Service W/ Surcharge	$ 6,368,448

$6,368,448/$5,887,440 = 1.0817

An 8.2% systemwide rate increase would be necessitated by the Surcharge.